

EXHIBIT A

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION
4 U.S. BANK, National Association,)
5 Plaintiff,)
6 vs.) Case No.
7 MICHAEL QUALIZZA, NEIL D. FREEMAN,) 4:21-cv-00120
8 TIMOTHY DIXON,)
9 Defendants and Counterclaimants,)
10 and)
11 DFQ MANAGEMENT LLC, and)
12 1501 WASHINGTON ST. LOUIS, LLC,)
13 Counterclaimants,)
14 vs.)
15 U.S. BANCORP COMMUNITY)
16 DEVELOPMENT CORPORATION, and)
17 U.S. BANK, NATIONAL ASSOCIATION,)
18 Counterclaim Defendants.)

19 VIDEO-RECORDED DEPOSITION OF
20 STEPHEN C. KRAMER

21 TAKEN ON BEHALF OF THE
22 DEFENDANTS AND COUNTERCLAIMANTS
23 JUNE 30, 2022

24 (Starting time of the deposition: 8:59 a.m.)
25

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1 And -- and then in 2010 moved into
2 business development and been in various capacities
3 there in business development since 2010, various
4 territories, switched territories, switched products
5 a couple times, but yeah.

6 **Q. In your position at CDC in business**
7 **development, who have you reported to?**

8 A. Let's see. Initially Mark Hirshman and
9 then Matt Philpott, and since 2015 Laura Vowell.

10 MR. BENNETT: Okay. Why don't we --
11 are we squared away on the Zoom or not?

12 MR. AMPLEMAN: No.

13 MR. BENNETT: Okay. Why don't we take
14 a minute and see if we can do that before I get into
15 more detail? I think Mike would like to hear.

16 VIDEOGRAPHER: We're going off the
17 record. The time is 9:06. This ends media unit
18 number one.

19 (WHEREIN, a recess was taken.)

20 VIDEOGRAPHER: We're going back on the
21 record. The time is 9:16. This begins media unit
22 number two.

23 **Q. (By Mr. Bennett) Mr. Kramer, when did**
24 **you first work with any of the developers of The**
25 **Last Hotel on any project?**

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1 A. So I first met Mike Qualizza probably
2 2005, 2006 time frame when he was just starting. He
3 had been at National Equity Fund and was starting
4 his own community development entity, UDF, and we
5 were one of the initial investors in that -- in that
6 entity. And Neil Freeman was affiliated with that
7 as their sponsoring entity, but I knew Neil but
8 really worked with Mike from going back to them.

9 Tim Dixon, we did the Iron Horse Hotel
10 in Milwaukee. Oh, boy. I don't remember the time
11 frame on that. Around 2010, 2011 I think is when we
12 met Tim. He was also affiliated with a development
13 that we did -- he partnered with another developer
14 customer of ours, Perry Motels, on a development
15 in -- in Minneapolis and worked with them on that as
16 well.

17 **Q. Great. Prior to The Last Hotel deal,**
18 **how many transactions were you involved in that**
19 **involved Mr. Qualizza?**

20 A. I couldn't tell you. It was a lot.

21 **Q. More than what?**

22 A. I mean, more than 15 probably, yeah.
23 Never as a developer, but as a community development
24 entity.

25 **Q. Got it. Do you remember any of those**

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1 **Q. So turning to this particular project,**
2 **when did you first learn about it?**

3 A. I'm sorry. I'm trying to remember the
4 time frame of going back. It's probably about 2016
5 I think when Mike and Tim Dixon first started
6 talking about acquiring that building and, you know,
7 doing this project.

8 **Q. Who approached you about it, Mike?**

9 A. Probably. I can't remember if it was
10 Mike or Tim or both, but I, you know, had contact
11 with both of them.

12 **Q. What was your reaction when you heard**
13 **about the opportunity?**

14 A. I thought, you know, it was something
15 that would be nice for the neighborhood. I thought
16 it would be a challenge given, you know, that
17 building. There had been other attempts to
18 redevelop that building, but it was something that,
19 you know, we as a resident, you know, as a neighbor,
20 our office is a block away, we were definitely in
21 support of and wanted to see happen.

22 **Q. And that's the old -- us from St. Louis**
23 **would call that the old International Shoe Building?**

24 A. That's correct, yes.

25 **Q. And had it been broken down for some**

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1 **time at that point?**

2 A. Yes. Yeah, it was vacant for -- for a
3 while. There had been a charter school in there
4 that closed or relocated, and I don't remember the
5 timing, but it had been a couple years.

6 **Q. So once the idea of redeveloping the**
7 **International Shoe Building comes to you, what --**
8 **what's your involvement in the time period between**
9 **learning about it and when the deal documents all**
10 **got signed later in 2017?**

11 A. So I mean, our -- our involvement is
12 helping to find sources to complete -- financing to
13 complete the redevelopment. My role, as I
14 mentioned, just that of equity, providing equity in
15 exchange for federal tax credit programs. I have a
16 relationship or had a relationship at the time with
17 the St. Louis Development Corporation, their new
18 markets group. They had an interest in seeing that
19 project done. So working with the representative
20 from there and helping to convince them to put their
21 allocation in and make it available for us to invest
22 in.

23 **Q. Did you talk to other parts of the bank**
24 **regarding things like providing the loan?**

25 A. So yes. At the time we did not --

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1 Q. And was that Husch in this deal?

2 A. Yes. Yes, it was Husch.

3 Q. Ms. Swallow; is that right?

4 A. Husch Blackwell.

5 Q. Husch Blackwell?

6 A. Yeah. Yeah.

7 Q. Do you remember the individual lawyer
8 involved?

9 A. So Steve McCandless is generally --
10 he's the partner relationship manager for us and
11 that's who I usually talk to, but generally there
12 are associates that actually do the day-to-day work
13 on it, yeah. I don't recall who those were on this
14 one.

15 Q. So the financial model -- what's the
16 purpose of the financial model, to make sure that
17 the project is viable, can meet its obligations
18 going forward?

19 A. For us that's one -- that is one, but
20 more importantly in order for us to claim the tax
21 credits we have to have an opinion, a tax opinion
22 from our attorney that says we have done all the
23 things that we need to do to be considered a partner
24 in this entity and the other entities, the community
25 development entities, in order to receive the tax

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1 credits.

2 Q. I got it. So do you have to have money
3 at risk?

4 A. We do, yes. Yeah.

5 Q. Yeah. In order -- in order to get the
6 tax benefits?

7 A. In order to be considered -- yes, in
8 order to be considered an owner of the entity that
9 ultimately receives tax credits, we have to have an
10 opinion that -- you know, tax opinion that that is
11 in fact the case.

12 Q. Yeah. And how you described what the
13 bank needs to be in order to get those tax credits
14 is essentially a partner?

15 A. Partner --

16 MR. BARTOLACCI: Object --

17 A. -- owner, yeah.

18 Q. Got it.

19 MR. BARTOLACCI: Object -- I didn't
20 finish my objection, but I was going to ask you to
21 answer anyway. Just object to the form of the
22 question.

23 THE WITNESS: Yeah.

24 MR. BARTOLACCI: To the extent it has
25 legal connotations.

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1 funding was accurate and recommending funding of the
2 -- of the draw request.

3 Q. Did Capital Consultants have people
4 that visited the site?

5 A. I assume so.

6 Q. Okay. Has the bank historically relied
7 on Capital Consultants?

8 A. Yes.

9 Q. When the issue of the Paric dispute
10 came up, what was Capital Consultants telling you
11 about the merits of Paric's claim versus the merits
12 of the developer's defenses?

13 A. I don't -- I don't have any knowledge
14 of what Capital Consultants -- I didn't -- I never
15 saw a report from them or talked to them directly or
16 recall anyone in the -- in our construction
17 management group discussing what the recommendation
18 was.

19 Q. So your -- part of your job was to go
20 talk to Mr. Freeman and Mr. Qualizza about resolving
21 Paric, right?

22 A. Yes.

23 Q. You understood that they thought they
24 had a good case and didn't want to pay them more
25 money under the change order, right?

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1 A. Yes.

2 Q. And you knew that Capital Consultants
3 would have information about the schedule and the
4 progress of construction and what Paric was doing,
5 right?

6 A. Yes.

7 Q. In terms of evaluating Mr. Freeman and
8 Mr. Qualizza's statements that they thought that the
9 Paric case had merit, did anyone at the bank to your
10 knowledge review Capital Consultants' reports or
11 talk to Capital Consultants about the strength of
12 the case?

13 A. I have to -- I have to assume yes, and
14 you know, we have two separate construction
15 management groups, one for the loan, one for the
16 equity side. And I'm not sure -- I don't recall --
17 I'm not sure who was in the most direct contact with
18 them at the time.

19 Q. If Capital Consultants or someone else
20 at the bank had told you actually it looks like
21 Paric has fault here and the defense may have
22 validity, would that have affected what you said to
23 Mr. Qualizza or Mr. Freeman about the issue of the
24 Paric dispute?

25 A. Well, I have to be very careful not to

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1 take one side or the other in those sorts of
2 conversations. If I had that knowledge, if it would
3 have impacted how I talked to them, I -- I don't
4 know. It's hypothetical. I didn't have that
5 knowledge.

6 Q. Sure. But the bottom line is you were
7 saying -- the bank's position, I know you're passing
8 along a message in many respects, right?

9 A. Uh-huh. That's right.

10 Q. Okay. But the message that you were
11 passing along was regardless of your views of the
12 merits of the Paric dispute, the bank wants this
13 settled?

14 A. Correct.

15 Q. Okay. And the reason the bank wanted
16 it settled was if it got settled, that would be a --
17 one of the things that would allow the bank to fund
18 the remaining amount on the loan?

19 A. Yeah. I mean, our -- the potential
20 negative impact on our collateral would no longer
21 exist.

22 Q. Were you involved -- did you become
23 aware that in the dispute with Paric Mr. Qualizza
24 and Mr. Freeman's groups ultimately tried to get the
25 information that Capital Consultants had about the

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1 **project through a subpoena?**

2 A. Yes. Yes.

3 **Q. What was the reaction inside the bank**
4 **to that?**

5 A. I'm trying to remember and maybe you
6 can help me, but there was a subpoena, but it was
7 not related -- was it related to another matter?
8 I --

9 **Q. Just say what you remember.**

10 A. Yeah, I -- it was related to another
11 matter outside of Paric, and I don't recall, but I
12 do know that it was not favorably received because
13 there -- you know, any time that a subpoena is
14 received there is additional costs that have to be
15 incurred, additional time that has to be spent, and
16 it is a burden on the bank or, you know, the CDC
17 that we would rather not have. And so receiving
18 that was not well-received.

19 **Q. By who?**

20 A. By generally --

21 **Q. Everyone at the bank?**

22 A. Anyone that had anything -- and there
23 were a lot of people involved in these
24 conversations, everyone from myself and the folks
25 that I report to, our asset management group,

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1 construction management, etc.

2 Q. Did you have copies of the consultant's
3 reports?

4 A. No.

5 Q. When you talked about you introducing
6 Mr. Qualizza and Mr. Freeman, Mr. Dixon to the
7 lending side with Fran Doherty, was Mr. Boyers
8 involved in that at all?

9 A. Personally? Like he would have
10 recommended that we introduce, but he wouldn't have
11 been involved in making the introduction himself
12 personally.

13 Q. And did Mr. Boyers recommend it?

14 A. Yes. Yes, he did.

15 Q. Okay. So you -- so then you -- when
16 you heard about the opportunity to redevelop this
17 vacant, dilapidated building in your own
18 neighborhood, did you talk to Mr. Boyers about that
19 opportunity?

20 A. Yes.

21 Q. Okay. Tell us about that.

22 A. I'm actually trying to think if I
23 actually had a conversation or if it was via e-mail.

24 Q. Either way. Just say the gist of your
25 communication.

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1 Q. -- he -- he says that you reached out
2 after our internal SAG consultation call, right?

3 A. Yeah.

4 Q. SAG is what?

5 A. Special asset group.

6 Q. So when we're talking here about
7 elevating the matter in the prior e-mail that we
8 looked at and then this e-mail talks about SAG being
9 involved, does that help remind you of --

10 A. That does help remind me that I suppose
11 we were talking to SAG. I don't know -- I don't --
12 I don't think I was involved in a call with SAG, but
13 this sounds like there was discussion with SAG among
14 some people internally.

15 Q. The e-mail that's marked as Exhibit 2
16 says, quote (quote as read):

17 Steve emphasized that if the change
18 order dispute is not substantially
19 resolved in 30 days, then this may be
20 transferred to SAG, in which case the
21 beneficial relationship that the
22 borrowers have with CDC equity will not
23 be helpful to the borrowers in
24 resolving the situation with SAG.
25 Do you see that?

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1 A. I do.

2 Q. Is that an accurate description of your
3 call as far as you can remember?

4 A. As far as I can remember, yes.

5 Q. So what you told Mr. Qualizza is he
6 needed to resolve that change order dispute in
7 30 days or the lending group is going to take over
8 and the fact that you have this really long history
9 with CDC on the equity side isn't going to help you
10 anymore?

11 A. If that's -- if that's what it says, if
12 I said it then something -- I don't know if I would
13 have used those exact words, but yes. Something to
14 that effect.

15 Q. Very good. Exhibit 2 when it talks
16 about you telling Mr. Qualizza that you needed to
17 resolve this in 30 days or this loan is going into
18 SAG and not going to be able to help him anymore,
19 that would be an accurate description of the gist of
20 what you told him?

21 A. Yes.

22 Q. Okay. So in response he committed to
23 try to resolve the change order dispute in 30 days,
24 right?

25 A. Yes.

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1 Q. And per Exhibit 2 then, if he resolved
2 it in 30 days he would still be able to take the
3 beneficial relationship that he had with CDC and
4 then the bank would continue to work with him?

5 A. Yes. That appears to what --
6 summarizes what was discussed.

7 Q. And you agree then that that would
8 be the -- if not the exact words that you used, but
9 the gist of the conversation?

10 A. I do agree with that, yes.

11 Q. I assume the 30 days was -- you were
12 looking for something around that time?

13 A. Yes.

14 Q. Okay. Did you understand when you're
15 having this conversation that the need to resolve a
16 lawsuit quickly is something that can affect the
17 leverage or ability to negotiate a more favorable
18 deal on their side?

19 A. Could you --

20 Q. Sure. I'll do it again.

21 A. Yeah, I just -- you mentioned a lawsuit
22 and I don't know --

23 Q. No problem. The Paric change order
24 dispute.

25 A. Okay.

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1 bank.

2 Q. So if it goes to SAG, all the --
3 Mr. Qualizza, Mr. Freeman, are now in a situation of
4 having to deal with different people than they've
5 been dealing with the last 15 years for all these
6 other deals, right?

7 A. That's correct.

8 Q. And SAG might make -- I mean, sorry,
9 I'll re-ask it. SAG would make different decisions
10 on things like waivers and accommodations and
11 flexibility from what you might do as a person who
12 worked with Mr. Qualizza for many years, correct?

13 A. That's right.

14 Q. So going to SAG would be a dramatic
15 change in the working relationship between the
16 developers and the bank?

17 A. It would be.

18 Q. And that dramatic change of going to
19 SAG would be -- would mean that things were just
20 going to be treated differently than you had over
21 the years?

22 A. Yes.

23 (WHEREIN, Exhibit 5, 4-18-19 e-mail
24 chain, was marked for identification by the Court
25 Reporter.)

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1 A. Yes. That's correct.

2 Q. She goes on to describe that (quote as
3 read) :

4 They may not have chosen to invest in
5 the hotel given the demands of the
6 sponsors and the expectation to go
7 above and beyond, and then get berated
8 for not going far enough.

9 Correct?

10 A. I do.

11 Q. Mr. Qualizza never berated you,
12 correct?

13 A. No.

14 Q. Correct? What I said was correct?

15 A. What you said is correct.

16 Q. I have to be careful about the double
17 negatives.

18 A. Okay, I see.

19 Q. And then she says (quote as read) :
20 There were other factors that went into
21 that decision, though, which assume --
22 You took that to mean the decision to
23 invest in The Last Hotel?

24 A. Yes.

25 Q. What were the other factors that went

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1 This -- this deal is no more challenging or
2 different than every transaction that we do. That
3 is what we do. We do investments in blighted areas
4 that have challenge -- that have difficulty getting
5 traditional financing. So we go into every deal
6 expecting that it's going to be a challenge.

7 Q. (By Mr. Bennett) You suggest that
8 anybody who has a relationship with Mr. Qualizza
9 should sit down and discuss the situation of future
10 opportunities, right?

11 A. Yes. That is what I said, yes.

12 Q. What were you hoping to accomplish by
13 that?

14 A. I think what I was hoping to accomplish
15 was to preserve the relationship that we had prior
16 to this transaction, which was a mutually beneficial
17 and friendly relationship so that as Laura pointed
18 out there are future opportunities that we know of
19 at this time that we would like to continue to
20 pursue under the status of the relationship prior to
21 this transaction.

22 (WHEREIN, Exhibit 7, 8-30-19 e-mail
23 chain, was marked for identification by the Court
24 Reporter.)

25 MR. BENNETT: I'm handing you what

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1 A. Yeah.

2 Q. Okay. It's the same day. It's just
3 earlier that day, right?

4 A. Uh-huh. Yes.

5 Q. Yes?

6 A. Yes. I'm checking the time, yes.

7 Q. Okay. So earlier in the day you learn
8 that reasons for denying the waiver are the lien for
9 the demo contractor and the fact that there had been
10 a lawsuit that named U.S. Bank and U.S. Bank CDE as
11 the defendant, right?

12 A. Yes.

13 Q. And then that afternoon you're informed
14 that in fact GenCorp was going to release its lien,
15 right?

16 A. Yes.

17 Q. And that would result in the dismissal
18 of the lien and also dismissal of the U.S. Bank
19 entities as defendants as well, right?

20 A. I don't -- I don't know about the
21 dismissal of the lawsuit where USB entities are
22 involved.

23 Q. So did you go back and say, hey, we
24 should talk about this again now that the lien is
25 gone and U.S. Bank isn't going to be a party

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1 A. Okay.

2 Q. -- and I think we'll confirm that.

3 A. Okay.

4 Q. Was the downward adjuster waived?

5 A. It appears that it was not.

6 Q. Why?

7 A. I don't know. Well, if I read, James
8 sent it back with some questions that are -- that
9 are in this e-mail from James Robertson.

10 Q. Okay. Well, let's look at your input
11 on the first page of Exhibit 8. You write an e-mail
12 on September 16th, 2019 to Darren Van't Hof, right?

13 A. Here we go. Yes, I did.

14 Q. Okay. And can you just read out loud
15 your summary?

16 A. (Quote as read):
17 Here's a correspondence with James on
18 the downward adjuster of The Last
19 Hotel, including a link to the WAM.

20 Q. I'm sorry, sir. Can you read your
21 second paragraph out loud from your September 16th,
22 2019 e-mail that begins with summary?

23 A. (Quote as read):
24 Summary. Construction was delayed by
25 four months due to a variety of

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1 factors, most outside their control.

2 The downward adjuster would result in
3 450,000 less equity, which would go to
4 paying down the bridge. Happy to
5 discuss further if you'd like.

6 **Q. And that's a true statement, right?**

7 A. That is a true statement. I did write
8 that.

9 **Q. And the 450,000 would allow the**
10 **developer to pay down the Octagon loan or whoever**
11 **else was the lender at that time on the project?**

12 A. Yes.

13 **Q. You knew that the bridge loans or the**
14 **mezzanine loans carry punitive interest rights,**
15 **right?**

16 MR. BARTOLACCI: Object to the form.

17 **Q. (By Mr. Bennett) Higher?**

18 A. I knew they were higher interest rates,
19 yes.

20 **Q. So does Exhibit 8 indicate that you**
21 **recommended waiving the downward adjustment because**
22 **the delays in constructions were outside the control**
23 **of Mr. Qualizza and Mr. Freeman and Mr. Dixon and**
24 **the developers, right?**

25 A. That is what this says, yes.

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1 Q. And -- and it says this because you
2 believed it to be true?

3 A. Yes.

4 Q. Did Mr. Boyers live by the office?

5 A. Does he or did he?

6 Q. Did Mr. Boyers have a residence?

7 A. He does not now, but he did at the
8 time, I believe.

9 Q. Who were the developers of that
10 apartment?

11 A. If I could go back.

12 Q. Sure.

13 A. He did not live in the --

14 Q. Apartment?

15 A. -- the building that was across the
16 street at this time.

17 Q. Did he have access to an apartment at
18 some point in time in the neighborhood?

19 A. He did, yes. I don't remember when he
20 moved from there to another part of downtown.

21 Q. And who were the developers of that
22 apartment building?

23 A. The McGowan Brothers Development.

24 Q. Did you guys do business with the
25 McGowan Brothers?

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1 **pandemic affected operations of The Last Hotel?**

2 A. Yes.

3 **Q. And have you -- were you involved in**
4 **decisions by the bank to waive conditions or make**
5 **accommodations to your partners in other deals**
6 **associated with the pandemic?**

7 A. Yes.

8 **Q. Can you describe that for us?**

9 A. I'm just trying to think back to that
10 time, and specifically hotels --

11 **Q. Or developers is fine.**

12 A. Yeah.

13 **Q. Anybody is fine.**

14 A. Right. I know that there were a number
15 of requests for -- and I'm thinking back to projects
16 that were generally under construction, requests to
17 basically recognize delays and that they were not
18 going to meet their place in service date because,
19 you know, in a lot of cities construction was
20 completely shut down. Operationally I'm just -- I
21 don't recall being involved in any conversations on
22 existing operating assets. Generally that would go
23 to the asset manager.

24 **Q. You would agree that the COVID pandemic**
25 **would make it impossible for a hotel to meet**

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1 whatever obligations it had?

2 A. Yes.

3 Q. And you would agree that The Last Hotel
4 is an example of such a hotel, right?

5 A. Yes.

6 Q. And you would agree that at the time of
7 contracting when you did this deal at the beginning
8 that no one could have foreseen that the pandemic
9 would have that effect, right?

10 A. What was it about contracting? I'm
11 sorry.

12 Q. Sure. Back in 2017 and '18 when these
13 deals were being made, would you agree that it would
14 have been impossible --

15 A. Yes.

16 Q. -- to foresee that COVID would make it
17 impossible for The Last Hotel to perform, correct?

18 A. Yes. Correct.

19 Q. And you do agree that COVID made it
20 impossible for the hotel to perform as projected?

21 A. Yes.

22 Q. I mean, in light of COVID and then --
23 and your prior observations that the delays in
24 construction were not due to Mr. Qualizza or
25 Mr. Freeman or Mr. Dixon, were you surprised that

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1 conclusion, but you may answer to the best of your
2 knowledge.

3 MR. BENNETT: Actually, I'll try to ask
4 a question that would not be subject to those
5 objections.

6 Q. (By Mr. Bennett) When you were talking
7 to everybody at the bank about how they're going to
8 treat Mr. Qualizza and Mr. Freeman, did anybody ever
9 bring up the idea that the bank had some obligation
10 to act in a way that wouldn't harm Mr. Qualizza or
11 Mr. Freeman or the development of the project?

12 MR. BARTOLACCI: Object to the form,
13 but you can answer.

14 A. Did we make our decisions in a manner
15 that would not harm or did we consider that --

16 Q. (By Mr. Bennett) Let me -- I'll try
17 again.

18 A. Okay.

19 Q. This can be subject to the objections
20 that were made.

21 A. Yeah.

22 MR. BARTOLACCI: All right.

23 Q. (By Mr. Bennett) You've already told
24 me that when the bank's making decisions the bank is
25 making those decisions based on what's in its best

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1 interest versus what's in the best interest of
2 Qualizza, Freeman --

3 A. Yes.

4 Q. -- and the project, right?

5 A. Correct.

6 Q. Okay. Was there any discussion in
7 those meetings that the bank had some obligation to
8 look out for in some way Mr. Freeman, Mr. Qualizza,
9 the project, the development in any way?

10 A. No.

11 Q. Okay. So in Exhibit 21 we just went
12 over, right?

13 A. Yeah.

14 Q. Did the bank agree to what Mr. Freeman
15 proposed?

16 A. I don't know.

17 (WHEREIN, Exhibit 22, 12-9-19 e-mail
18 chain, was marked for identification by the Court
19 Reporter.)

20 Q. (By Mr. Bennett) Handing you what we
21 marked as Exhibit 22. Exhibit 22 is an e-mail that
22 Mr. Qualizza forwards to you dated November 9, 2019,
23 right?

24 A. Yes.

25 Q. It describes his plan of action, right?